

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 16-10253-GAO

AKAMAI TECHNOLOGIES, INC.,  
Plaintiff and Counterclaim Defendant,

v.

LIMELIGHT NETWORKS, INC.,  
Defendant and Counterclaim Plaintiff.

ORDER  
June 24, 2016

O'TOOLE, D.J.

Following the initial scheduling conference, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rules 16.1(F) and 16.6(B), the Court adopts the following schedule for both parties' patent infringement claims. In this Order, the word "patentee" refers to the relevant patent holder for each particular infringement claim, and the term "accused infringer" refers to the relevant opposing party for each particular infringement claim.

It is hereby ORDERED that:

Initial disclosures, if not already exchanged, shall be served on either party by **July 1, 2016**.

All amendments to pleadings and joinder of additional parties shall be filed and served by **December 2, 2016**.

**I. Preliminary Disclosures**

**A. Preliminary Infringement Disclosure**

No later than **September 23, 2016**, the patentee shall serve and file preliminary disclosure of infringement claims. The patentee shall specify which patent claims are alleged to be infringed and identify the accused product(s) or method(s) that allegedly infringe those claims. The patentee

shall also specify whether the alleged infringement is literal or falls under the doctrine of equivalents. If the patentee has not already done so, the patentee shall produce all documents supporting its contentions and/or identify any such supporting documents produced by the accused infringer. Such disclosures may be amended and supplemented up to thirty (30) days before the date of the Markman Hearing.

**B. Preliminary Invalidity and Non-Infringement Disclosures**

No later than **November 4, 2016**, the accused infringer shall serve and file preliminary invalidity and non-infringement contentions. The accused infringer shall identify prior art that anticipates or renders obvious the identified patent claims in question and, for each such prior art reference, shall specify whether it anticipates or is relevant to the obviousness inquiry. If applicable, the accused infringer shall also specify any other grounds for invalidity, such as indefiniteness, best mode, enablement, written description, or unpatentability. If the accused infringer has not already done so, the accused infringer shall produce documents relevant to the invalidity defenses and/or identify any such supporting documents produced by the patentee. Further, if the accused infringer has not already done so, the accused infringer shall produce documents sufficient to show operation of the accused product(s) or method(s) that the patentee identified in its preliminary infringement disclosures. Such disclosures may be amended and supplemented up to thirty (30) days before the date of the Markman Hearing.

**II. Claim Construction Proceedings**

**A. Exchange List of Claim Terms**

No later than **January 27, 2017**, the parties shall simultaneously exchange a list of claim terms to be construed and proposed constructions. The parties shall also exchange intrinsic evidence in support of their respective claim constructions on that date.

B. Preliminary Claim Construction Briefs

No later than **February 17, 2017**, the parties shall simultaneously exchange and file preliminary claim construction briefs. Each brief shall contain a list of terms construed, the party's proposed construction of each term, and evidence and argument supporting each construction. Absent leave of Court, preliminary claim construction briefs shall be limited to 25 pages, double spaced, of at least 12-point Times New Roman font or equivalent, including footnotes.

C. Reply Claim Construction Briefs

No later than **March 10, 2017**, the parties shall simultaneously exchange reply briefs. Absent leave of Court, reply briefs shall be limited to 15 pages, double spaced, of at least 12-point Times New Roman font or equivalent, including footnotes.

D. Joint Claim Construction Statement

No later than **March 24, 2017**, the parties shall finalize the list of disputed terms for the Court to construe. The parties shall prepare and file a joint claim construction and prehearing statement (hereafter the "joint statement") that identifies both agreed and disputed terms.

(i) The joint statement shall note the anticipated length of time necessary for the claim construction hearing and whether any party proposes to call witnesses, including a statement that such extrinsic evidence does not conflict with intrinsic evidence.

(ii) The joint statement shall also indicate whether the parties will present tutorials on the relevant technology, the form of such tutorials, and the timing for such tutorials in relation to the claim construction hearing.

(iii) The joint statement shall include a proposed order in which parties will present their arguments at the claim construction hearing, which may be term-by-term or party-by-party, depending on the issues in the case.

(iv) The joint statement shall limit the number of claim terms to be construed and shall prioritize the disputed terms in order of importance. The Court suggests that, ordinarily, no more than ten (10) terms per patent be identified as requiring construction.

(v) The joint statement shall include a joint claim construction chart, noting each party's proposed construction of each term and supporting evidence. The parties may use a form similar to the one shown below.

TERM	PATENTEE'S CONSTRUCTION	ACCUSED INFRINGEMENT'S CONSTRUCTION	COURT'S CONSTRUCTION

### **III. The Claim Construction Hearing (a.k.a. "Markman Hearing")**

The Markman Hearing is scheduled for **Tuesday, April 25, 2017 at 10:00 a.m.**

### **IV. Other Scheduled Dates**

The Court will add other deadlines to the schedule, such as for amendments to infringement/non-infringement disclosures after the Markman decision, for the close of fact discovery, and for expert disclosures and discovery in a separate order when appropriate.

### **V. Summary**

The following chart summarizes the dates scheduled in this Order.

Event	Date
Initial Disclosures	July 1, 2016
Infringement Disclosures	September 23, 2016
Invalidity and Non-Infringement Disclosures	November 4, 2016
Amendments to Pleadings & Joinder of Additional Parties	December 2, 2016

Exchange List of Claim Terms to be Construed and Proposed Constructions	January 27, 2017
Simultaneous Filing of Claim Construction Briefs	February 17, 2017
Simultaneous Filing of Reply Claim Construction Briefs	March 10, 2017
Filing of Joint Claim Construction Statement	March 24, 2017
Markman Hearing	April 25, 2017 at 10:00 a.m.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.  
United States District Judge